JAN 1 1 1956

No. 34

Supreme Court of the United States

OCTOBER TERM, 1955

Per Curiam

Jack Gordon, on Behalf of Himself and All Others Similarly Situated, Appellant, v. Lyndon Van Hoosier, Assessor of Montgomery County, Alabama, et al.

Appeal from the District Court of the United States for the Middle District of Alabama.

[January 16, 1956]

Per Curiam.

The motion to affirm is granted and the judgment is affirmed.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	4
Summary of argument	7
Argument	10
I. The Hobbs Act does not exempt labor unions and their members from responsibility for acts of extortion and robbery because the money sought from the victim is demanded as "wages" for unwanted, superfluous and fictitious "services" of union members	13
A. The plain statutory language affords no basis for exempting the proscribed conduct where the payments sought by the use or threat of force and violence are for the benefit of a union or its members	13
B. The legislative history of the Hobbs Act shows the purpose of Congress to reach cases like this one	19
C. The provision in the Hobbs Act saving intact the federally protected rights of labor affords no immunity for the crimes charged in this indictment	35
II. There is no constitutional restriction forbidding application of the Hobbs Act to the facts alleged in the indictment	40
Conclusion	43

371771—56——1

CITATIONS

Cases:

	Page
Allen-Bradley Local v. *Board*, 315 U. S. 740	36
American Federation of Labor v. *Swing*, 312 U. S. 321	42
American Newspaper Publishers Assn. v. *N. L. R. B.*, 345 U. S. 100	6, 15
Apex Hosiery Co. v. *Leader*, 310 U. S. 469	41
Automobile Workers v. *O'Brien*, 339 U. S. 454	36
Automobile Workers v. *Wisconsin Board*, 336 U. S. 245	36
Bianchi v. *United States*, 219 F. 2d 182, certiorari denied, 349 U. S. 915	38, 39
Callanan v. *United States*, 223 F. 2d 171, certiorari denied, 350 U. S. 862	38, 39
Cleveland v. *United States*, 329 U. S. 14	41
Cole v. *Arkansas*, 338 U. S. 345	42
Duplex Co. v. *Deering*, 254 U. S. 443	36
Hulahan v. *United States*, 214 F. 2d 441	10, 39, 41
Milk Wagon Drivers Union of Chicago v. *Meadowmoor Dairies*, 312 U. S. 287	16, 42
National Labor Relations Board v. *Fansteel Corp.*, 306 U. S. 240	9, 36–37
National Labor Relations Board v. *Gamble Enterprises, Inc.*, 345 U. S. 117	6, 15
National Labor Relations Board v. *Kelco Corp.*, 178 F. 2d 578	36
National Labor Relations Board v. *Longview Furniture Co.*, 206 F. 2d 274	36
Nick v. *United States*, 122 F. 2d 660, certiorari denied, 314 U. S. 687	10, 39, 41
Southern Steamship Co. v. *N. L. R. B.*, 316 U. S. 31	9, 36
United Construction Workers v. *Laburnum Corp.*, 347 U. S. 656	36
United States v. *Alsup*, 219 F. 2d 72, certiorari denied, 348 U. S. 982	18
United States v. *Bradford*, 194 F. 2d 197, certiorari denied, 343 U. S. 979	12
United States v. *Carbone*, 327 U. S. 633	16

Cases—Continued

	Page
United States v. *Compagna*, 146 F. 2d 524, certiorari denied, 324 U. S. 867	39
United States v. *Hutcheson*, 312 U. S. 219	37
United States v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893	8, 12, 13, 33, 34, 39
United States v. *Local 807*, 315 U. S. 521	8, 10, 11, 17, 18, 19–22, 32, 38, 40–41
United States v. *Petrillo*, 332 U. S. 1	10, 12, 49
United States v. *Varlack*, 225 F. 2d 665	39
United States v. *Zisblatt*, 172 F. 2d 740	12

Statutes:

Anti-racketeering Act of 1934, Act of June 18, 1934, 48 Stat. 979:	
Sec 2	8, 11, 17, 20
Sec. 3	11
Hobbs Act, 18 U. S. C. 1951, 62 Stat. 793	2, 7, 8, 11, 13, 35

Miscellaneous:

88 Cong. Rec. 5334–5335	23
89 Cong. Rec.:	
3162	24, 25
3163	25
3193	24, 28
3195	28
3201	27
3202–3203	28
3204–3205	28
3205	28
3207	28
3210–3211	28
3212–3213	28
3215	28
3217	27
3217–3218	28
3220	28
3221	28
3225–3226	28
3230	28

Miscellaneous—Continued

	Page
91 Cong. Rec.:	
11841	29
11842	24, 29
11843	24, 29
11846	29
11905–11906	29
11907	29
11909	29, 30
11910	29
11911	29, 30
11912	29
11912–11913	29
11913	30
11914	29, 30
11914–11915	30
11917	29
11918	30
11919	31
11920	31
11920–11921	29
11921	29
11922	32
92 Cong. Rec. 7308	32
F. R. Crim. P., Rule 34	12
Hearings before Subcommittee No. 3 of the House Committee on the Judiciary, 77th Cong., 2d Sess., on H. R. 5218, H. R. 6752, H. R. 6872, H. R. 7067	23
H. R. 32, 79th Cong., 1st Sess	28
H. R. 653, 78th Cong., 1st Sess	24, 28
H. R. 6872, 77th Cong., 2d Sess	23
H. R. 7067 (77th Cong., 2d Sess.)	23
H. Rep. No. 66, Pt. 1, 78th Cong., 1st Sess.	24, 28
H. Rep. No. 238, 79th Cong., 1st Sess	28
H. Rep. No. 1283, 79th Cong., 1st Sess	29
H. Rep. No. 2176, 77th Cong., 2d Sess	24, 28
H. Res. No. 406, 79th Cong., 1st Sess	29
S. 2347, 77th Cong., 2d Sess	22

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 54

UNITED STATES OF AMERICA, APPELLANT

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, A LABOR UNION AND VOLUNTARY ASSOCIATION OF WORKINGMEN AFFILIATED WITH INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court arresting judgment of conviction (R. 14–16) is not reported.

JURISDICTION

On January 24, 1955, the District Court entered an order arresting the judgment of conviction on counts one and two of the indictment under which appellees had been found guilty (R. 17–18). A notice of appeal to this Court was filed in the District Court on February 21, 1955 (R. 18–19).

and this Court noted probable jurisdiction of the appeal on October 10, 1955 (R. 19; 350 U. S. 813). The jurisdiction of this Court to review on direct appeal the decision of the District Court arresting the judgment of conviction for insufficiency of the indictment, based on a construction of the statute upon which it is founded, is conferred by 18 U. S. C. 3731.

QUESTION PRESENTED

Whether the obstruction of interstate commerce or the attempt to do so by the wrongful use of actual and threatened force, violence and fear, in an attempt to compel an employer to pay wages for imposed, unwanted, superfluous and fictitious services of laborers, is a violation of the Hobbs Act, 18 U. S. C. 1951.

STATUTE INVOLVED

18 U. S. C. 1951, 62 Stat. 793, commonly referred to as the Hobbs Act, provides:

> § 1951. *Interference with commerce by threats or violence.*
>
> (a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000

or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

(c) This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 52, 101–115; 151–166 of Title 29 or sections 151–188 of Title 45.

STATEMENT

On December 17, 1953, an indictment in nine counts charging violations of 18 U. S. C. 1951 was returned against the defendants in the United States District Court for the Southern District of Illinois, Southern Division (R. 1–6). Counts one and two, on which defendants were found guilty (R. 1–3), charged that they had obstructed, delayed, and affected interstate commerce and attempted to do so by extortion. The extortion alleged was that the defendants had attempted, through the unlawful use of actual and threatened force, violence and fear, to obtain property from contractors engaged in interstate commerce. The contractors were alleged to be then engaged in executing a contract with the United States for the maintenance of a levee bordering the Chain of Rocks Canal, which was a channel and conduit for traffic on the Mississippi River and its tributaries. The property alleged to have been demanded was money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers, commonly known as swampers, in connection with the operation of machinery and equipment being used by the contractors in the execution of their contracts.

The court submitted four of the nine counts to the jury, which returned a verdict of guilty as to both defendants on counts one and two and not guilty on the other counts (R. 11). Defendants

filed motions in arrest of judgment as well as motions for a judgment of acquittal and, in the alternative, for a new trial (R. 10, 12–13). The court denied defendants' motions for acquittal and for a new trial, but granted their motions in arrest of judgment on the ground that 18 U. S. C. 1951, as construed by the court, does not apply to the facts alleged in the indictment (R. 14–16). The memorandum opinion states (R. 14):

> * * * the Court is of the opinion that the motion in arrest of judgment should be allowed for the following reasons:
>
> 1. That the Court is without jurisdiction of the offense because the facts alleged in the Indictment fail to set forth an offense against the United States such as to give this Court jurisdiction.
>
> 2. A proper construction of the Anti-Racketeering Act clearly indicates that it does not cover the type of activity charged in the Indictment, and to interpret the act in question as covering the type of activity charged in the Indictment is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits.

After measuring the indictment and its allegations against the language of 18 U. S. C. 1951, the District Court concluded as a matter of law that no crime was charged in the indictment within the intendment and reach of Section 1951. It reasoned that since appellee Green was acting

"within his rights and responsibilities as a Union representative," and since all "featherbedding" is not an unfair labor practice (*American Newspaper Publishers Assn.* v. *National Labor Relations Board*, 345 U. S. 100; *National Labor Relations Board* v. *Gamble Enterprises, Inc.*, 345 U. S. 117), the use of force and violence in connection with featherbedding demands was not within the purview of the statute. In this connection the court states (R. 16):

> * * * It seems incongruous that Congress intended that a lawful act on the part of Green in demanding money in the form of wages from the contractor to be paid for imposed, unwanted and fictitious services of laborers, accompanied by either threats of force or violence (which under State law constitute only misdemeanors) can be punished as a severe felony carrying a maximum of twenty years in the penitentiary under the Federal law.

From the order of the District Court granting the motion in arrest of judgment, the Government took this appeal under 18 U. S. C. 3731.[1]

---

[1] The appellees filed a Motion to Dismiss for Want of Jurisdiction, arguing that the order was not really in arrest of judgment, but was in the nature of a judgment *non obstante veredicto*. The Government filed a brief in opposition to that motion, pointing out that the District Court had expressly denied the motions for judgment of acquittal and a new trial and had based its decision wholly on the insufficiency of the indictment to state an offense under 18 U. S. C. 1951. On October 10, 1955, this Court noted probable jurisdiction of the appeal with no request for briefs or argument on the issue of jurisdiction. 350 U. S. 813. [fn. cont'd]

SUMMARY OF ARGUMENT

I

A. The plain terms of the Hobbs Act, 18 U. S. C. 1951 (*supra*, pp. 2–3), cover the conduct charged in this indictment, wholly apart from the legislative history (Point I, B, *infra*) revealing the unmistakable purpose of Congress to do so. The Act applies to "[w]hoever * * * affects commerce * * * by robbery or extortion or attempts or conspires so to do," and defines "extortion" to include "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear * * *." Apparently recognizing the literal applicability of this language to this case, the District Court nevertheless held that there is an exception for one who, while employing force and violence, tenders to his victim the stand-by services of an unwanted and unneeded worker. There is no

[1] (Continued) On October 20, 1955, the Government filed a designation of the portion of the records to be printed, including only those documents which were relevant to the review of the decision of the District Court considered as one in arrest of judgment. Appellees filed a cross-designation, seeking to have printed the complete transcript of testimony at the trial. On November 3, 1955, the Government moved to strike appellees' cross-designation, pointing out that the transcript would have no relevancy to the sole issue of the sufficiency of the indictment presented by this direct appeal from the motion in arrest of judgment. On December 12, 1955, the Court granted the motion to strike the cross-designation.

basis for such an exception in what Congress wrote.

B. The legislative history of the Hobbs Act shows that Congress specifically rejected the very exception the decision below interpolates. In the predecessor Anti-racketeering Act of 1934, there was an exception where the objective of the threatened or actual force was "the payment of wages by a bona-fide employer to a bona-fide employee * * *." Interpreting this exception, this Court held the 1934 Act inapplicable to labor union members who used threats and violence to obtain payments for unwanted and unneeded employees. *United States* v. *Local 807*, 315 U. S. 521. Responding directly to this decision, Congress left no doubt of its purpose to require a different result. It accomplished this purpose in the Hobbs Act, eliminating the exception on which the *Local 807* decision rested and demonstrating in the repeated pronouncements of responsible members that this amendatory Act was to apply according to its terms, with no exemption for force and violence when employed by a union or union members to exact payments for unsought and superfluous service. *United States* v. *Kemble*, 198 F. 2d 889 (C. A. 3), certiorari denied, 344 U. S. 893.

C. The provision in the Hobbs Act (18 U. S. C. 1951 (c)) expressly preserving the rights of labor under other federal statutes affords no ba-

sis for the decision below. None of these statutes protects or condones the use of force and violence to achieve benefits for labor unions or their members, whether or not such benefits might lawfully be sought by lawful means. See, *e. g.*, *National Labor Relations Board* v. *Fansteel Corp.*, 306 U. S. 240; *Southern Steamship Co.* v. *National Labor Relations Board*, 316 U. S. 31. Of course, the Hobbs Act does not sweep within the "wrongful" conduct it proscribes the employment for lawful ends of union tactics which are in themselves legitimate. But force and violence, which are plainly "wrongful" in the absence of some justification not suggested here, are not "protected" by any federal statute against the sanctions of the Hobbs Act because they are employed by a labor union or its members. Given the necessary showing of an impact on commerce, a demand for money at gunpoint would be "robbery" within the Hobbs Act, notwithstanding that the money was destined for a union treasury. Similarly, the conduct alleged in this indictment is none the less within the Act's definition of "extortion" because the exactions sought were to be paid to union members the victim neither wished nor needed to employ.

II

The District Court suggested (R. 14), without explanation, that there might be some constitutional obstacle to applying the Hobbs Act in an-

cordance with its plain language and history. Apart from the fact that this vague adumbration hardly provides a satisfactory basis for constitutional adjudication by this Court (*United States* v. *Petrillo*, 332 U. S. 1, 5, 12), the suggestion seems groundless. The power of Congress over interstate commerce clearly extends to the prohibition of force and violence obstructing such commerce (see *United States* v. *Local 807, supra*, at 536); and has been upheld as exercised in the Hobbs Act. *Nick* v. *United States*, 122 F. 2d 660 (C. A. 8), certiorari denied, 314 U. S. 687; *Hulahan* v. *United States*, 214 F. 2d 441 (C. A. 8). Neither the First Amendment nor any other provision of the Constitution precludes the application of this prohibition to a labor union or its agents.

ARGUMENT

The two counts of the indictment in this case under which appellees were found guilty (R. 1–3) charge them with obstructing, delaying, and affecting interstate commerce by extortion in attempting to obtain money from certain contractors engaged in interstate commerce through the wrongful use of actual and threatened force, violence and fear. Going beyond these bare essentials of the crime as defined in the Act, the indictment also alleges that the money exacted from the contractors was for wages to be paid for imposed, unwanted, superfluous and fictitious

services of laborers, commonly known as swampers, in connection with the operation of machinery and equipment being used by the contractors in the execution of government contracts.

While at least tacitly recognizing that the indictment alleges the elements of an offense defined by the Hobbs Act, 18 U. S. C. 1951 (a) (*supra*, pp. 2–3), the District Court has held in effect that the Act was not intended to apply where the motive or ultimate plan of the extortioner in employing the threats and force and violence to exact money was to secure for a union member either the opportunity to work for, or the equivalent of, earned wages. The memorandum opinion acknowledges (R. 15) that the Hobbs Act makes no express exception "for cases where the property involved [in an act of extortion] should be money demanded to be paid in the form of wages." The District Court also recognized that, following the decision in *United States* v. *Local 807*, 315 U. S. 521 (1942), Congress repealed the exception[2] which was there held to exempt from the purview of the Anti-

---

[2] Section 2 of the Act of June 18, 1934, 48 Stat. 979, excepted from its coverage:

"Any person who * * *

"(a) Obtains or attempts to obtain * * * the payment of wages by a bona-fide employer to a bona-fide employee * * *."

Section 3 of that Act similarly provided:

"(b) The terms 'property', 'money', or 'valuable considerations' used herein shall not be deemed to include wages paid by a bona-fide employer to a bona-fide employee."

racketeering Act of 1934 labor union members who used threats and violence to secure employment, or, in lieu thereof, payments for unwanted and unneeded employees. Nevertheless, despite this deletion of the exception which was the basis for the *Local 807* decision, the District Court concluded that the Hobbs Act continues to exempt conduct of the type there involved.

We submit that the plain language of the Hobbs Act refutes this conclusion and that, if this may be doubted, the legislative history demonstrates beyond question the specific purpose of Congress to reach conduct such as that alleged in the present indictment. We believe, contrary to the decision below and in accord with the decision of the Third Circuit in *United States* v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893, that the use or threat of force and violence to compel the payment of money for unwanted and superfluous employees constitutes a crime under the Hobbs Act.[3]

---

[3] In our treatment of the single issue relating to the construction of the statute upon which the indictment is based, we do not nor can we properly look beyond the allegations of the indictment, which, on the motion in arrest of judgment, were held not to state a cause of action under the statute. *United States* v. *Bradford*, 194 F. 2d 197 (C. A. 2), certiorari denied, 343 U. S. 979; *United States* v. *Ziablatt*, 172 F. 2d 740, 741–742 (C. A. 2); see also Rule 34, F. R. Crim. P. Issues as to the sufficiency of the evidence or the propriety of the trial may be raised in normal course on appeal after judgment, should the construction issue on which this appeal is based be resolved in favor of the Government. *United States* v. *Petrillo*, 332 U. S. 1, 5.

I

THE HOBBS ACT DOES NOT EXEMPT LABOR UNIONS AND THEIR MEMBERS FROM RESPONSIBILITY FOR ACTS OF EXTORTION AND ROBBERY BECAUSE THE MONEY SOUGHT FROM THE VICTIM IS DEMANDED AS "WAGES" FOR UNWANTED, SUPERFLUOUS AND FICTITIOUS "SERVICES" OF UNION MEMBERS

A. THE PLAIN STATUTORY LANGUAGE AFFORDS NO BASIS FOR EXEMPTING THE PROSCRIBED CONDUCT WHERE THE PAYMENTS SOUGHT BY THE USE OR THREAT OF FORCE AND VIOLENCE ARE FOR THE BENEFIT OF A UNION OR ITS MEMBERS

As a matter of language, there is no place in the Hobbs Act for the exception inferred by the District Court in this case. See *United States* v. *Kemble*, *supra*, 198 F. 2d at 891. Within the reach of the Act's penalties is (18 U. S. C. 1951 (a)):

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section * * *.

The term "extortion," central to the issue here involved, is defined in unequivocal terms as follows (18 U. S. C. 1951 (b)):

> (2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

Nowhere does this language even faintly suggest an exception where the "property" taken or sought to be taken from another is the money equivalent of earned wages. The fact that the extortionist regards the payment as the equivalent of an earned wage is as irrelevant to proof of a crime under this Act as it would be in the prosecution of any other crime of violence, including robbery. Nor is the criminal character of an act within the extortion definition altered by the fact that in its commission the extortionist tenders to his victim the stand-by services of an unwanted and unneeded worker as a spurious *quid pro quo* for the money. From the standpoint of the victim the result is the same as if no such services had been offered. He is made to hand over money through fear of harm to his person or his property and receives nothing of value to him in return. The extortionist is unjustly enriched as the result of his criminal activity, whatever descriptive term is used to describe the money that he demands, or whatever his rationale in committing the act.

The District Court was of the view that, to constitute extortion under the Hobbs Act, there must be not only the use of force and violence to coerce the payment, but also an ultimate objective which would in itself be unlawful. In other words, the court thought that, if the payment was one which could have been sought by

lawful means, the effort to obtain it by threatened or actual force and violence was not reached by the Act. But this view cannot be squared either with the Hobbs Act or with similar prohibitions elsewhere in the criminal law. The fact that money may be obtained through salesmanship or through forms of moral or other "coercion" which the law permits is obviously no excuse for obtaining the same money at the point of a gun. Similarly, the fact that a demand by a union officer might be lawfully asserted furnishes no justification for the attempt to accomplish the same end through the use of force and violence or the threat thereof.[4]

---

[4] It is not as clear as the District Court seems to have believed that the objective alleged in this indictment was a legal one. The District Court cites *American Newspaper Publishers Assn.* v. *National Labor Relations Board*, 345 U. S. 100, and *National Labor Relations Board* v. *Gamble Enterprises*, 345 U. S. 117, for the proposition that "featherbedding" is not necessarily an unfair labor practice. Neither of these decisions, however, sanctioned even peaceful coercive methods on the part of labor representatives to obtain gratuities for nonexistent services. The *American Newspaper Publishers Association* case left no doubt, in fact, that the Labor Management Relations Act means what it says when it condemns exactions, despite the peaceful means by which they may be obtained, "for services which are not performed or not to be performed" (345 U. S. at 110). The *Gamble Enterprises* opinion likewise makes it quite clear that an exaction of pay for "standing-by," in contrast to "a bona fide offer of competent performance of relevant services," is an unfair labor practice (345 U. S. at 123–124). The allegation of this indictment that money was demanded for unwanted, superfluous and "fictitious" services on its face raises an issue as to whether the demand was not *per se* an illegal

The opinion below speaks (R. 15–16) of "Green's original activity" as being "within his rights and responsibilities as a Union representative," and refers to the "lawful act on the part of Green in demanding money in the form of wages from the contractor." However, as this Court observed in *Milk Wagon Drivers Union of Chicago* v. *Meadowmoor Dairies*, 312 U. S. 287, 294, "acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence." It is no more logical to consider Green's demand for money as separate from his use of threats and violence to induce a state of fear in his victim than it would be had he used a loaded pistol to achieve the same result. In neither case would the otherwise benign motive of fostering labor union objectives be an excuse under the Hobbs Act for the fact that methods constituting extortion or robbery in interstate commerce were used.

The District Court erroneously reasoned that, if Green's acts were perpetrated to achieve labor union objectives, his conduct could not be unlawful. However, motive in this sense is not an element of the offense under the Hobbs Act, which

---

one under the Taft-Hartley Act. Since, however, the opinion below construed the indictment as charging a demand for the type of employment permitted under the decisions cited above, that construction is binding for purposes of this appeal. *United States* v. *Carbone*, 327 U. S. 633, 641.

prohibits the use of threats and violence affecting interstate commerce to exact money regardless of the ultimate "objective" or motive of the robbery or extortion. Prior to the amendatory Hobbs Act, it was essential under the Anti-racketeering Act of 1934 to show not only that the defendant wilfully and through threats of violence induced a state of fear in his victim with the intent of extorting a money payment, but that his ultimate "objective" was not to promote himself to the status of an "employee," even an unwanted and unused employee. A genuine tender of services, even though refused, was sufficient to remove him from the purview of the Act as a "person who * * * obtains or attempts to obtain * * * the payment of wages from a bona-fide employer to a bona-fide employee" within the meaning of the exception contained in its Section 2 (a) (fn. 2, *supra*, p. 11; see *infra*, pp. 20–22). See *United States* v. *Local 807*, *supra*, 315 U. S. at 533–534. The removal of the 1934 Act's Section 2 (a) exception by the Hobbs Act renders proof of the ultimate "objective" of the defendant irrelevant. If threats and violence are used in connection with a plan or purpose to extort affecting interstate commerce, the crime is completed. The *scienter* factor is satisfied by proving "the intention to use force and violence on the victim and the intention that the victim shall pay because of

it." *United States* v. *Local 807*, *supra*, at 542 (dissenting opinion of Mr. Justice Stone).[5]

In short, the Hobbs Act squarely covers this case in its unambiguous reference to "whoever" obstructs interstate commerce "by robbery or extortion," or commits or threatens physical violence "to any person or property" in furtherance of a plan or purpose to rob or extort. This inclusive language contains no exception for cases where extortion is employed to benefit a labor union or its members.[6] And, as we show in the

---

[5] This opinion is highly pertinent in interpreting the Hobbs Act because its reasoning was adopted by the congressional committee which drafted the amending legislation (see *infra*, pp. 19–32).

[6] In *United States* v. *Alsup*, 219 F. 2d 72 (C. A. 5), certiorari denied, 348 U. S. 982, the appellees contended that, despite the application of the Kickback Act (18 U. S. C. 874) to "whoever" commits the offense, the statute should be read to exclude union officials from its purview. Rejecting this argument, the Court of Appeals said (p. 74):

"The statute, in unmistakable terms, applied to 'whoever' commits the offense proscribed. Like any other criminal statute we think it is directed against an offense, not against particular persons. True, the Carbone decision exempted persons who were engaged in legitimate union activities, but we think that exemption extended to such persons because of the nature of the activities in which they were engaged, not simply because they were officials of the union. The indictment in the Carbone case, according to the trial court's construction as interpreted by the Supreme Court, described the activities of the accused in such a manner as to show that they were simply collecting union dues or fees according to union rules, a lawful activity not proscribed by the statute.

"In the instant case, however, no such facts appear in the indictment * * *."

discussion which follows, the Congress acted specifically to preclude any such exception.

B. THE LEGISLATIVE HISTORY OF THE HOBBS ACT SHOWS THE PURPOSE OF CONGRESS TO REACH CASES LIKE THIS ONE

Erasing any doubt that the statutory terms, which literally apply to this case, were meant to operate as they were written, the legislative history of the Hobbs Act reveals the concentrated and specific concern of Congress with this very problem. Beginning immediately following this Court's decision in *United States* v. *Local 807*, 315 U. S. 521, the legislative efforts which culminated in the Hobbs Act were focused precisely on the objective of changing the result in that case, where the exception in the 1934 Act for "the payment of wages by a bona-fide employer to a bona-fide employee" was held to exempt activities like the ones here. This history demonstrates, we think, that the District Court has attempted to reinstate the exception Congress deleted and the rule in *Local 807* which the deletion was designed to change.

The facts of the *Local 807* case revealed a situation similar in many aspects to the one in this case. The respondents were a teamsters union local and various of its members. Some of these union members lay in wait for out-of-state trucks coming through the Holland Tunnel and other points of entry from New Jersey into New York City. When a truck would enter the city, the

union members would force their way onto the trucks, and by beating or threats of beating the drivers, procure payments to themselves from the drivers or their employers of a sum of money for each truck, $9.42 for a large truck and $8.41 for a small one, said to be the equivalent of the union wage scale for a day's work. In some cases the out-of-state driver was compelled to turn over his truck to one or more of the respondents who would drive it to its destination, unload it, pick up the merchandise for the return trip, and surrender it to the driver at the point where it had been taken over. In other cases the money was demanded and obtained, but the owners or drivers rejected the offers of the union members to do or help with the driving or unloading. In still other cases the jury could have found that the respondents either failed to offer to work or refused to work for the money when asked to do so.

The respondents were indicted for and convicted of conspiracy to violate Section 2 of the Anti-racketeering Act of June 18, 1934, 48 Stat. 979. The judgments of conviction were reversed

---

Section 2 then applied to:

"Any person who, in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade or commerce—

"(a) Obtains or attempts to obtain, by the use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, *not in-*

by the Court of Appeals for the Second Circuit (418 F. 2d 684), and the Government sought review in this Court, asking that the judgments be reinstated. The Court affirmed, but declined to dismiss the indictment as prayed for by the respondents in a cross-petition. 315 U. S. at 524–525.

The focal issue in the *Local 807* case was not whether the indictment stated a cause of action under the statute or whether the proof established the allegations of the indictment, but whether the trial court had correctly instructed the jury as to the application of the exception for "the payment of wages by a bona-fide employer to a bona-fide employee" (fn. 7, *supra*). It was the theory of the trial judge in his charge to the jury that the application of this exception depended, not on whether it was the ultimate objective or motive of the *defendant* to offer his services in return for the forced payment of money, but rather on whether the *victim* paid the money in exchange for services (in which case an employer-employee status might be said to be pre-

cluding, however, the payment of wages by a bona-fide employer to a bona-fide employee; or

"(b) Obtains the property of another, with his consent, induced by wrongful use of force or fear, or under color of official right; or

"(c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b) * * *." [Emphasis added.]

ated), or protection (in which case the tender of services would only be incidental). This Court took a contrary view, holding that the application of the exception depended upon the "objective" or motive of the defendants in committing the act, and that "the jury was bound to acquit the defendants if it found that their objective and purpose was to obtain by the use or threat of violence the chance to work for the money but to accept the money even if the employers refused to permit them to work," 315 U. S. at 538. There is every indication in this Court's opinion that, but for the proviso, the case would have been deemed to come squarely within the literal language of the Anti-racketeering Act.

Immediately following that decision, Congress moved with significant alacrity to amend the Anti-racketeering Act of 1934. This Court rendered its opinion on March 2, 1942. A week later, on March 9, 1942, Senator Holman introduced a bill designated S. 2347 (77th Cong., 2nd Sess.) for the express purpose of removing the exception on which the Court had based its conclusion that the facts of the *Local 807* case were not within the coverage of the Act. The bill would have accomplished this by amending Sections 2 (a) and 3 (b) to make unlawful all demands for the payment of money or other consideration by force or violence. S. 2347 was referred to a subcommittee of the Senate Committee on the Judiciary for hearings, but

was apparently not acted on further. 88 Cong. Rec. 5334–5335.

On March 27, 1942, Representative Hobbs introduced another bill, H. R. 6872 (77th Cong., 2nd Sess.), for the same purpose of eliminating the exception from the Anti-racketeering Act of 1934. This and other related bills were referred to a subcommittee for study. Hearings before Subcommittee No. 3 of the House Committee on the Judiciary, 77th Cong., 2nd Sess., on H. R. 5218, H. R. 6752, H. R. 6872, H. R. 7067, pp. 4–5. During the hearings, various witnesses testified to the fact that farmers and others selling produce in interstate commerce were being systematically stopped en route to various urban market centers throughout the country and through violence or threats of violence were being required to pay a day's "wages" for an unwanted and superfluous "employee." Mr. Hobbs inserted into the record of the hearing (*id.*, pp. 88–95) the opinion of this Court in the *Local 807* case. The overriding purpose of overcoming that decision by amendatory legislation was constantly adverted to by committee members throughout the hearings. See, *e. g.*, pp. 6, 159, 185–190, 195–197, 214, 363–366, 399, 422–429 of the Hearings, *supra*.

H. R. 6872 was superseded by another bill, H. R. 7067, 77th Cong., 2nd Sess. (*id.*, pp. 5–6), which was reported out on May 27, 1942. Both the majority and minority reports made it clear that H. R. 7067 was intended to eliminate the

exception created by Section 2 (a) of the 1934 Act. The majority report reproduced the *Local 807* opinions in their entirety. H. Rep. No. 2176, 77th Cong., 2d Sess., pp. 2–9.

On January 6, 1943, substantially the same bill was reintroduced in the 78th Congress as H. R. 653 (H. Rep. No. 66, Pt. 1, 78th Cong., 1st Sess.). This bill contained as Title III an additional provision (similar to the present 18 U. S. C. 1951 (c)) to insure that it would not be construed to repeal, modify or affect the Clayton Act, the Norris-LaGuardia Act, the Railway Labor Act, or the National Labor Relations Act. The report of the House Committee on the Judiciary said (H. Rep. No. 66, Pt. 1, 78th Cong., 1st Sess., pp. 1–2):

> This title is an amendment of the existing antiracketeering law which was enacted in 1934. It was passed in an effort to eliminate racketeering in relation to interstate commerce, of concern to the Nation as a whole. That statute came under examination of the Supreme Court recently in *United States* v. *Local 807* and the opinion in that case is set out in full, both the majority opinion and the dissent.

Representative Colmer of the Rules Committee,[8] who had introduced H. R. 653, made the follow-

[8] Hearings on H. R. 653 were held by both the Judiciary and Rules Committees of the House of Representatives (89 Cong. Rec. 3193). The Rules Committee departed from its usual practice of hearing only members of Congress, and heard the testimony of various labor leaders who had asked to be heard. 89 Cong. Rec. 3162. See also 91 Cong. Rec. 11842–11843.

ing explanation of its purpose on the floor of the House (89 Cong. Rec. 3162):

> This legislation, reported almost unanimously by the Committee on the Judiciary, I understand, would seek to stop racketeering in interstate commerce. It will be recalled that legislation was enacted some years ago that sought to do that very thing, and that the Supreme Court in a recent decision involving a case that arose in New York, rendered a decision through Mr. Justice Byrnes which held that that legislation did not cover the type of racketeering this legislation seeks to curb.

Representative Michener of the House Rules and Judiciary Committees stated in similar vein (89 Cong. Rec. 3163):

> * * * The bill finds its inception and motivation in the fact that the Supreme Court rendered a decision a few months ago interpreting the antiracketeering act passed by this Congress in 1934. The soundness of that decision is, in the considered opinion of many, most questionable. It was the purpose of that act to prevent robbery, extortion, and racketeering. It was not aimed at organized labor in any way, and in an endeavor to make that sure there was included within the law a provision which attempted to guarantee that thing. By what I deem, and many, especially among labor leaders, today deem to be a most unfortunate decision by the Su-

preme Court, this bill has been introduced. It was introduced at the invitation of the Supreme Court * * *.

* * * Then over in New York there was extortion, robbery, and racketeering committed by men who it developed later were members of a labor union. That same Department of Justice prosecuted those men for racketeering under that law. Those racketeers were convicted in their own bailiwick, in the city of New York, as racketeers, by a jury of their peers. They then appealed to the circuit court of appeals upon the ground largely that the judge had committed error in his charge to the jury, and that as members of a labor union they were attempting to carry out the proper and legal purposes of the labor union, and that they were exempt from law regardless of what they did, so long as they had in their own mind the thought that they were furthering a legitimate activity of a labor union. The circuit court of appeals reversed the conviction. The case then came to the Supreme Court of the United States, and the Supreme Court of the United States sustained the circuit court of appeals and indicated to the Congress that if the Congress intended to include this kind of act on the part of members of labor unions it should make it clear and amend the law. That is the purpose of this law. * * *

Representative Gwynne of the Judiciary Committee said (89 Cong. Rec. 3204):

> * * * Putting it briefly, what this bill does is to rewrite the law and leave out that exception on which the Supreme Court's decision is based. So the net result would be that the same set of facts which existed in the case of the Government against Local 807 would result in a conviction and punishment. That is title I.

And the original author of H. R. 653, Representative Hobbs, made the following observation as to its purpose (89 Cong. Rec. 3217):

> This bill is grounded on the bedrock principle that crime is crime, no matter who commits it; and that robbery is robbery and extortion extortion, whether or not the perpetrator has a union card. It covers whoever in any way or degree interferes with interstate or foreign commerce by robbery or extortion.
>
> * * * * *
>
> This bill is drawn in response to the challenge of the following quotation from the majority opinion:
>
> "This does not mean that such activities are beyond the reach of Federal legislative control. Nor does it mean that they need go unpunished."

During the vigorous and lengthy floor debate on the bill numerous members of the two committees which had considered the bill likewise showed in

clear terms that the purpose of the amendments was to extend the coverage of the 1934 Act to meet the precise factual problem of the *Local 807* case.[*]

Although H. R. 653 passed the House (89 Cong. Rec. 3230), it was not acted on by the Senate (H. Rep. No. 238, 79th Cong., 1st sess., p. 1).

On January 3, 1945, in the first session of the 79th Congress, Representative Hobbs introduced H. R. 32, a bill which was the counterpart of H. R. 653. The House Judiciary Committee recommended passage on February 27, 1945, in a report (H. Rep. No. 238, 79th Cong., 1st sess.) closely similar to its previous reports (see H. Rep. No. 2176, 77th Cong., 2d sess.; H. Rep. No. 66, Pt. 1, 78th Cong., 1st sess.). In this report (H. Rep. No. 238, *supra*) the Committee stated (p. 10):

> It is not the intention of the committee that title III be interpreted as authorizing any unlawful acts, particularly those amounting to robbery or extortion. The need for the legislation was emphasized by the opinion of the Supreme Court in the case of *United States v. Local 807* (315 U. S. 521).

[*] See 89 Cong. Rec. 3193 (Rep. Halleck), 3195, 3215, 3217-3218, 3221 (Rep. Hobbs), 3202-3203 (Rep. Walter), 3204-3205 (Rep. Graham), 3205 (Rep. Kefauver), 3207 (Rep. O'Hara), 3210-3211 (Rep. Hancock), 3212-3213 (Rep. Springer), 3220 (Rep. Celler), 3225-3226 (Rep. Robsion).

The bill was brought to the House floor under a limited debate resolution (H. Res. No. 406, 79th Cong., 1st sess.; H. Rep. No. 1283, 79th Cong., 1st sess.). Speaker after speaker emphasized that the proposal was intended to eliminate the exception which was the basis of the *Local 807* decision.[10] Thus, Representative Michener of the Judiciary and Rules Committees told the House membership (91 Cong. Rec. 11842):

> A decision of the Supreme Court of the United States, rendered in 1942, makes this amendment to the law necessary if the rights and liberties of our people are to be assured.

Later in floor debate Representative Michener stated that if interstate commerce was being interfered with and farmers and truckers were being forced to "submit to the treatment outlined by Chief Justice Stone [in his dissenting opinion in the *Local 807* case], then it seems clear that it is the obligation of the Congress to furnish national protection in these interstate operations". 91 Cong. Rec. 11843.

Another member of the Judiciary Committee, Representative Summers of Texas, after quoting

---

[10] *E. g.*, 91 Cong. Rec. 11841 (Rep. Cox), 11842 (Rep. Walter), 11846 (Rep. LaFollette), 11905–11906 (Rep. Robsion), 11907 (Rep. Fellows), 11909 (Rep. Summers of Texas), 11910 (Rep. Springer), 11911 (Rep. Jennings), 11912 (Rep. Hobbs), 11912–11913 (Rep. Whittington), 11914 (Rep. Russell), 11917 (Rep. Rivers), 11920–11921 (Rep. Gwynne), 11921 (Rep. Lemke).

from the *Local 807* decision, stated (91 Cong. Rec. 11909):

> It was the purpose of the Judiciary Committee to prevent the rendition of that sort of decision by any court in the future, so the language upon which that holding was based was eliminated.

Still another committee member, Representative Jennings, told the House (91 Cong. Rec. 11911):

> The necessity for this measure grows out of the misconstruction placed upon the antiracketeering law enacted in 1934 by what is popularly known as the Byrnes opinion in the case of United States against Local 897.

During the floor debate, an attempt was made by Representative Celler to insert in the bill an exception for cases where the payment sought to be exacted through violence or threats of violence was "wages paid by a bona fide employer to a bona fide employee" (91 Cong. Rec. 11913). Representative Hobbs, speaking in opposition to this amendment, argued that it was "substantially the same as [the exception in the 1934 Act] which caused the error into which the Supreme Court fell when the majority opinion was rendered in the Local 807 case." 91 Cong. Rec. 11914. Other members expressed similar objections (Representative Russell, 91 Cong. Rec. 11914; Representative Walter, *id.*, 11914–11915; Representative Baldwin, *id.*, 11918), and the amendment was re-

jected. *Id.*, 11919. Representative LaFollette then offered an amendment which would have continued the 1934 exception in substantially the same form but would have redefined "the payment of wages by a bona fide employer to a bona fide employee" so as to exclude any payments made in response to force or violence.[11] He explained that this was intended (91 Cong. Rec. 11919) "to prevent a recurrence of what happened in the Supreme Court opinion". Representative Gwynne, opposing the amendment, expressed the fear that (*id.*, 11920) "it would constitute an open invitation to the Supreme Court to decide that case the same, if it should come before them again * * *." Mr. LaFollette's mo-

[11] This would have been accomplished by adding to the existing law the following provision (91 Cong. Rec. 11919):

"Sec. 7. The following definitions shall be binding upon all courts in construing this act:

"(a) The term 'the payment of wages by a bona fide employer to a bona fide employee' shall not be construed so as to include the payment of money or the transfer of a thing of value by a person to another when the latter shall use or attempt to use or threaten to use force or violence against the body or to the physical property (as distinguished from intangible property) of the former or against the body of anyone having the possession, custody, or control of the physical property of the former, in attempting to obtain or obtaining such payment or transfer.

"(b) The term 'the rights of a bona fide labor organization in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States' shall not be construed so as to ignore, void, set aside, or nullify the definitions set out or the words used in or the plain meaning of subsection (a) hereof."

tion to recommit the bill for amendment was voted down, and H. R. 32 was enacted (91 Cong. Rec. 11922; 92 Cong. Rec. 7308).

From this survey, there can be no doubt that Congress was attempting, in framing the Hobbs Act, to reach just the sort of activity which is alleged in this indictment. It was keenly aware of the fact that the situation involved in the *Local 807* case was a substantial evil which was being repeated all over the country. The debates show that Congress felt that robbery and extortion had no place as a means of procuring wage payments for union members. While there was lengthy and frequently brisk floor debate on the most effective means of dealing with this problem without inhibiting legitimate labor union activity, there was a broad area of agreement as to the need for *some* legislation to overcome the *Local 807* decision.

Since Congress thus intended the new Act to cover an area of activity which this Court in its *Local 807* opinion said the old Act did not cover, several general conclusions are justified. In the first place, the Act no longer excuses force and violence when employed by a union or its members to create fear in a potential employer to force him to accept the services of supernumeraries or pay them a wage equivalent. Secondly, the ultimate "objective" of the extortionist is no longer a pertinent consideration. Whether or not the extortionist fancies himself as being moved by

high principle because he acts on behalf of his union is irrelevant if he employs threats and violence with an intent that the victim pay over money in response to such threats and violence. And, finally, the Act as now written does not draw any distinction between crimes of extortion and robbery committed in connection with a labor dispute and those committed in other contexts. The labor dispute background is as factually irrelevant to a Hobbs Act violation as it would be in any other crime of violence punishable under federal law.

These were the conclusions of the Third Circuit in *United States* v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893. The evidence in that case established a situation analogous to the instant case. There, the victim, a truck driver employed by a Pennsylvania corporation, drove a load of merchandise to Camden, New Jersey, where he attempted to make delivery. While unloading the merchandise, the driver was approached by the defendant Kemble, a union business agent, who, after ascertaining that the driver was not a union member, demanded that he hire a helper from a local union for $10.00, which was the equivalent of a day's wages. On his refusal, defendant Kemble employed actual and threatened violence against the driver to force him to conform to the demand.

In an opinion affirming a judgment of conviction against Kemble for committing acts of vio-

lence pursuant to a plan and purpose to obstruct delivery and affect commerce and the movement of articles and commodities in commerce by extortion in violation of the Hobbs Act, Judge Hastie, speaking for the court, said (198 F. 2d at 891–892):

> Certainly, as a matter of semantics, the quoted words of the statute, "obtaining of property from another", are broad enough to cover Kemble's objective. And an examination of the legislative history of the statute convinces us that Congress intended such comprehensive coverage.
>
> * * * * *
>
> * * * the conclusion seems inescapable that Congress intended that the language used in the 1946 statute be broad enough to include, in proper cases, the forced payment of wages. We say "in proper cases" advisedly. For it is not necessary that we here consider the great variety of circumstances in which coercion may be involved in the payment of wages. We need not consider the normal demand for wages as compensation for services desired by or valuable to the employer. It is enough for this case, and all we decide, that payment of money for imposed, unwanted and superfluous services such as the evidence shows Kemble attempted to enforce here by violent obstruction of commerce is within the language and intendment of the statute.

We submit that the Third Circuit opinion and the statutory terms and legislative history upon which that opinion is based afford a complete answer to the reasoning of the court below in this case. The District Court's conclusion that Green's activity "in demanding money in the form of wages from the contractor to be paid for imposed, unwanted and fictitious services of laborers, accompanied by either threats of force or violence" does not constitute a crime under the Hobbs Act, certainly cannot be established, as contended, by evidence "as to the intent of Congress in the passage of this Act" (R. 15, 16). On the contrary, the facts pleaded in the indictment reflect the precise evil which prompted Congress to enact the Hobbs Act.

C. THE PROVISION IN THE HOBBS ACT SAVING INTACT THE FEDERALLY PROTECTED RIGHTS OF LABOR AFFORDS NO IMMUNITY FOR THE CRIMES CHARGED IN THIS INDICTMENT

In support of its conclusion that threats and violence to procure wage payments are not covered by the Hobbs Act, the court below pointed out (R. 15) that this Act "specifically provides that it is not to be construed to repeal, modify or affect the provisions of the Norris-La Guardia Act, and the Wagner Act."* The implication,

---

* 18 U. S. C. 1951 (c), to which the court referred, also preserves without modification pertinent provisions of the Clayton Act and the Railway Labor Act, providing:

"This section shall not be construed to repeal, modify or affect section 17 of Title 15, sections 15, 101–115, 151–166 of Title 29 or sections 151–188 of Title 45."

though not spelled out, appears to be that if the indictment in this case were sustained, the Hobbs Act would operate to render illegal, activities which are traditional and legitimate coercive tactics of labor unions to achieve legitimate labor union objectives.

The answer is that the "wrongful" use of threats and violence to exact money alleged in this indictment is clearly not within any of the protections saved by the Hobbs Act. As the decisions of this Court show, such activities are nowhere safeguarded or condoned by the Clayton, Norris-La Guardia, and National Labor Relations Acts. *United Construction Workers* v. *Laburnum Corp.*, 347 U. S. 656; *Automobile Workers* v. *O'Brien* 339 U. S. 454, 459; *Automobile Workers* v. *Wisconsin Board*, 336 U. S. 245; *Southern Steamship Co.* v. *National Labor Relations Board*, 316 U. S. 31; *Allen-Bradley Local* v. *Board*, 315 U. S. 740; *National Labor Relations Board* v. *Fansteel Corp.*, 306 U. S. 240; *Duplex Co.* v. *Deering*, 254 U. S. 443. See also *National Labor Relation Board* v. *Longview Furniture Co.*, 206 F. 2d 274 (C. A. 4); *National Labor Relations Board* v. *Kelco Corp.*, 178 F. 2d 578 (C. A. 4). A classic illustration of this point is the *Southern Steamship Co.* case, in which this court refused to compel reinstatement of union seamen under the National Labor Relations Act where they had committed mutiny as a means of compelling union recognition. In the earlier *Fansteel Corp.* case, similarly involving the use of

violence (seizing and holding employers' buildings in a "sit-down" strike), the Court held such activity to be (306 U. S. at 256) "outside the protection" of the National Labor Relations Act. Addressing itself to the contention that that Act required the reemployment of men who had been discharged for such unlawful conduct, the Court said (306 U. S. at 257–258):

> * * * There is not a line in the statute to warrant the conclusion that it is any part of the policies of the Act to encourage employees to resort to force and violence in defiance of the law of the land. On the contrary, the purpose of the Act is to promote peaceful settlement of disputes by providing legal remedies for the invasion of the employees' rights. * * * The affirmative action that is authorized is to make these remedies effective in the redress of the employees' rights, to assure them self-organization and freedom in representation, not to license them to commit tortious acts or to protect them from the appropriate consequences of unlawful conduct. * * *

It is clear, of course, that the Hobbs Act does not condemn as "wrongful" or "illegal" union tactics which are legitimate and lawful. It does not, in the words of this Court in *United States* v. *Hutcheson*, 312 U. S. 219, 234–235, "say that that which on the equity side of the court is allowable conduct may in a criminal proceeding

become the road to prison." But this gives no support to the opinion of the District Court in this case. Force and violence are in themselves obviously "wrongful" in the sense of being illegal under the law of the United States or any State or Territory. *Callanan* v. *United States*, 223 F. 2d 171, 174 (C. A. 8), certiorari denied, 350 U. S. 862; *Bianchi* v. *United States*, 219 F. 2d 182, 196 (C. A. 8), certiorari denied, 349 U. S. 915. In the Hobbs Act, such conduct, where it obstructs interstate commerce and its end is the exaction of money payments, is in itself an evil which Congress sought to prevent. If a union member should force a victim engaged in interstate commerce to hand over money at pistol point for the union's treasury, it could hardly be denied that this would constitute "robbery" under the Hobbs Act. Nor could it be contended that such conduct was exempted by any of the federal labor laws. The contention fails here for identical reasons.[13]

In cases like *Callanan*, 223 F. 2d 171, *supra*, and *Bianchi*, 219 F. 2d 182, *supra*, where the means employed are on the surface the usual collective bargaining weapons, including the use of fear of economic loss caused by the threat of a strike, there can be a "wrongful" use of fear to exact payments within the condemnation of the Hobbs

[13] See also the discussion addressed to this issue in the Brief for the United States, pp. 41–45, *United States* v. *Local 807*, Nos. 131 and 132, October Term, 1941.

Act only if the objective is illegal. Such are the cases, including *Callanan* and *Bianchi*, where labor union officers or agents have brought the power of their organizations to bear on a victim for the purpose of exacting tribute which they intend simply to apply to their own personal use. *E. g., United States* v. *Varlack*, 225 F. 2d 665 (C. A. 2); *Hulahan* v. *United States*, 214 F. 2d 441 (C. A. 8); Cf. *United States* v. *Compagna*, 146 F. 2d 524 (C. A. 2), certiorari denied, 324 U. S. 867; *Nick* v. *United States*, 122 F. 2d 660 (C. A. 8), certiorari denied, 314 U. S. 687. There, the employment of fear by means in themselves lawful is rendered "wrongful" by its objectives. Force and violence and threats thereof, on the other hand, are plainly "wrongful" absent a showing of justification, and our point is simply that neither the Hobbs Act nor any other federal statute affords justification for such activities alleged in the instant indictment.

This is the conclusion reached by the Third Circuit in *United States* v. *Kemble*, 198 F. 2d 889, certiorari denied, 344 U. S. 893, discussed *supra* at pp. 33–34. As the court there held, the history of the Hobbs Act leaves no doubt of the Congressional purpose to punish a union's use of force and violence to enforce payment for unwanted "stand-by" labor, whether or not such payments may lawfully be sought through the peaceful devices of collective bargaining. Neither the Hobbs

Act itself nor any of the federal legislation it leaves unaffected affords any ground for thwarting this plain objective.

II

THERE IS NO CONSTITUTIONAL RESTRICTION FORBIDDING APPLICATION OF THE HOBBS ACT TO THE FACTS ALLEGED IN THE INDICTMENT

The opinion below states (R. 14), without further elaboration, that to interpret the Hobbs Act "as covering the type of activity charged in the Indictment is to extend the jurisdiction of the Court, and the power of Congress beyond their Constitutional limits." Whether the District Court meant by this that the Hobbs Act as applied to the instant indictment would transgress the commerce power of the Federal Government, or whether it meant that "the type of activity charged in the Indictment" is protected by some First or Fifth Amendment guaranty, is not quite clear. In any event, neither of these theories, and no other, supports the District Court's bare suggestion of a constitutional difficulty.[14]

In addition to their arguments relating to the construction of the Anti-racketeering Act of 1934, the petitioners in the *Local 807* case challenged

---

[14] The very vagueness of the District Court's opinion in this respect suggests the appropriateness of deferring questions of the constitutionality of the Hobbs Act, as applied, to "a stage where the decision of a precise constitutional issue is a necessity." *United States* v. *Petrillo*, 332 U. S. 1, 5, 12.

the power of the Federal Government to enact legislation seeking to prohibit acts of violence in interstate commerce. Although it decided the construction issue adversely to the Government's position, this Court made short shrift of the suggestion that Congress could not have reached the problem presented in that case had it chosen to do so. The Court expressly noted that its conclusion "does not mean that such activities are beyond the reach of federal legislative control." 315 U. S. at 536.

The Anti-racketeering Act of 1934 had previously been sustained as a valid exercise of the commerce power in *Nick* v. *United States*, 122 F. 2d 660 (C. A. 8), certiorari denied, 314 U. S. 687. Cf. *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 491–492, fn. 14. And since its amendment by the Hobbs Act in 1946, the constitutional validity of this measure protecting commerce from extortion has been recognized in *Hulahan* v. *United States*, 214 F. 2d 441 (C. A. 8). Cf. *Cleveland* v. *United States*, 329 U. S. 14, where this Court said (p. 19):

> * * * The power of Congress over the instrumentalities of interstate commerce is plenary; it may be used to defeat what are deemed to be immoral practices; and the fact that the means used may have "the quality of police regulations" is not consequential.

3. The judgment of the District Court was not an order in arrest of judgment but was in effect a judgment non obstante veredicto, based upon the Court's consideration of the evidence.

May, 1955.

A. M. FITZGERALD,
SCHAEFER O'NEILL,
Attorneys for Appellees.

If Congress could validly enact the Hobbs Act under its commerce power, it could certainly extend its penalties to anyone whose activities come within its definitions and policy, regardless of the fact that in a given instance the violators are a labor union and its agent. While labor unions may enjoy certain First Amendment rights to communicate to employers and the public the legitimate grievances of their members, they enjoy no special constitutional license to employ the "shakedown" or threats and violence as substitutes for peaceful methods of persuasion, particularly where such threats and violence are used for the purpose of exacting wage payments for refused, or in this case "fictitious," services of supernumeraries. Even in upholding a union's right to picket, this Court recognized that peaceful labor union activity "when blended with violence may have a significance which neutralizes the constitutional immunity which such acts would have in isolation." *American Federation of Labor* v. *Swing*, 312 U. S. 321, 323; and see *Milk Wagon Drivers Union of Chicago* v. *Meadowmoor Dairies*, 312 U. S. 287; *Cole* v. *Arkansas*, 338 U. S. 345, 353–354. It is far clearer that force and violence or threats to employ them can by no stretch of imagination find a place among the rights the Constitution protects.

There is, in short, no valid constitutional reason to create an exception in the application of the

STATEMENT IN SUPPORT OF MOTION TO DISMISS APPEAL

I.

The Supreme Court is without jurisdiction for the reason that the District Court's decision is based not only on its interpretation of the indictment under the Hobbs Act (18 U.S.C. 1951) but also on its findings and conclusions concerning the evidence.

The District Court's Order was based, as the Memorandum of Opinion clearly shows, not only upon insufficiency of the indictment under the statute but also upon a consideration of and conclusions from the evidence.

The District Court did more than Appellant states it did (Footnote 2, p. 7, and Footnote 8, p. 13 of Appellant's Statement as to the Jurisdiction). After measuring the indictment against the statute, it made specific findings on the evidence in its Memorandum of Opinion wherein, measuring the evidence against the Act, it concluded that the evidence did not prove a crime under the Act. Reading the Memorandum of Opinion there is no escape from this conclusion.

The Opinion of a District Court is part of the record on appeal (*United States vs. Taylor*, 147 U.S. 695); Supreme Court Rule 12, Par. 2.

The District Court's Memorandum of Opinion contains these significant findings, not of law but of facts in evidence, one of which indeed is referred to by Appellant in its statement (P. 6 of Statement as to Jurisdiction).

---

1. The Memorandum of Opinion of the District Court, together with the Order on Motions in arrest of Judgment, are set forth in full in the Appendix to Appellant's Statement as to Jurisdiction (PP. 15-21) and are not repeated here.

Hobbs Act for "the type of activity charged in the Indictment" (R. 14). Violence and threatened violence are, after all, among the most elemental and serious of criminal activities. Their employment to the injury of commerce is nowhere in the Constitution immunized against the powers of Congress.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

SIMON E. SOBELOFF,
Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
CARL H. IMLAY,
Attorneys.

JANUARY 1956.

(a) "In the case at hand *I conclude that Green's original activity* in 'attempting to obtain from Arthur W. Terry, Jr., his money in the form of wages to be paid for imposed, unwanted, superfluous and fictitious services of laborers; which said charge was seriously controverted, was of itself not a violation of this statute, and within his rights and responsibilities as a Union representative, which is not prohibited by this statute." (P. 18 of Appendix to Appellant's Statement) (Emphasis added).

(b) "It seems incongruous that Congress intended *that a lawful act* on the part of Green in demanding money in the form of wages from the contractor . . ." (P. 18 of said Appendix) (Emphasis added).

(c) "For this Court now to say that when a labor organization or officer of said organization *advocated and demanded the employment of labor, which had been customary and agreed to by contractors and laborers in this community*, was a violation of this particular Act appears to me to be unreasonable." (P. 19 of said Appendix) (Emphasis added).

(d) "I conclude that *the trouble* in this Community and on this particular job was caused by a disagreement between the contractor and labor, and *was in no wise an attempt to extort for the use of either the union* or the Defendant, Green, any money or property of the contractor." (P. 19 of Appendix) (Emphasis added):

It is clear from the four above excerpts that the trial Judge considered and was deeply impressed by the *evidence* he heard. His finding that the defendant, Green's, *original activity* (for which he was nevertheless indicted) was, within his rights and responsibilities as Business agent of the Union,—that it was a *lawful act*—the employment of laborers, commonly known as swampers had been *customary and agreed to by contractors and laborers in this community*—and that *the trouble in this particular job was caused by a disagreement between the contractor and*